IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 705 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S.JANGID CONSTRUCTION PVT. LTD.

Versus

M/S.BELL CERAMICS LTD.

Appearance:

MR PT CHACKO for the Petitioner.

MR AB VYAS for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/12/2002

ORAL JUDGEMENT

This is a thoroughly misconceived revision application filed by the original defendant. The plaintiff has filed a suit for recovering certain amount against the defendant, being Special Civil Suit No.489 of 1997.

In the aforesaid suit, on behalf of the original defendant, i.e., the present petitioner herein, an application was submitted, requesting the Court to dismiss the suit on the ground that the same is barred by limitation and the plaintiff has no locus standi to file the suit. In the said application at Exhibit 14, it is stated by the defendant that the plaintiff has no locus standi to file the said suit as no material was supplied to the defendant. It is also stated in the application that the statement of account, which was issued by the plaintiff to Messrs. Jaycee Ceramics, Mumbai was Invoice-cum-Delivery challan dated 29.3.1994, and that itself proves that the material was supplied to Messrs. Jaycee Ceramics, Mumbai. It is also the say of the petitioner in that application that the claim of the plaintiff is time barred and the suit is required to be dismissed on the ground that the same is time-barred.

The learned trial judge has rejected the said application. After considering the arguments of both the sides, the trial court has found that the issue involved is required to be tried as and when the party leads evidence in this behalf. It has been found by the trial court that the Court has to decide the issue whether the suit is maintainable or not and such question can be decided only after taking evidence of both the sides. It was found by the trial court that the application submitted by the defendant at Exhibit 14 was not required to be considered at the said stage, as, ultimately, after considering the evidence, the issue is required to be answered accordingly. Mr.Kinariwala, learned Advocate for the applicant, fairly submitted that the issues are not yet framed by the trial court. In my view, if that be so, such application was not required to be entertained at the aforesaid stage when even issues are not framed, because, naturally, after issues are framed, the party can pray that a particular issue may be framed and the same may be tried as a preliminary issue. In the instant case, the trial court has found that whether the suit is required to be dismissed on the ground that the same is time-barred is required to be decided only after recording evidence of the parties, and looking to the pleadings and documents on record, the trial court found it difficult to decide the said question on the basis of the application submitted by the defendant. Mr.Kinariwala, however, submitted that in view of the decision of this Court in Patel Premji Jivraj v. Patel Shantilal Kanji, VII GLR 931, the issue of limitation can be decided as a preliminary issue. There cannot be any dispute that if issues of law are arising

in the suit and such suit can be disposed of on such issue of law only, such issue can be tried as a preliminary issue by the Court. In the instant case, the Court itself has found that considering the nature of the pleadings and the documents on record, the aforesaid point can be decided only after the parties lead appropriate evidence before the Court. Under these circumstances, in my opinion, it cannot be said that the trial court has committed any error of jurisdiction in rejecting the said application Exhibit 14, submitted by the petitioner-original defendant. I, therefore, do not find any substance in this revision application. However, in the facts and circumstances of the case, the trial court is directed to dispose of the said suit expeditiously so that appropriate answers can be given by the Court while disposing of the suit finally.

The revision application is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief shall stand vacated.

Learned Advocate for the petitioner prayed that the interim relief granted earlier may be continued for some time. However, it seems that the defendant is interested in delaying the disposal of the suit. Request for continuing the interim relief granted earlier is rejected.

Writ to be sent to the trial court forthwith.

17th December, 2002 (P.B. Majmudar, J.)

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(apj)